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VIA ECF

September 5, 2025

Hon. Ona T. Wang
Southern District of New York

Re: In re OpenAI, Inc., Copyright Infringement Litigation,
25-md-3143 (SHS) (OTW); This Document Relates To: All Cases

Dear Magistrate Judge Wang:

Class and News Plaintiffs (collectively, “Plaintiffs”) write to address their continuing concerns regarding OpenAI’s deficient collection and production of its employees’ text and social media messages.¹ On August 15 and 22, OpenAI submitted two sworn declarations (Dkts. [461](#), [482](#)) (the “Declarations”) in response to this Court’s Order that it provide sworn testimony on the following topics:

- (1) Defendants’ process for ensuring proper custodial interviews;
- (2) Defendants’ process for ensuring proper custodial collections and review; and
- (3) Defendants’ process for ensuring only appropriate redactions and exclusions of certain messages were made to its custodial collections.

See Dkt. [459](#) at 3-4.

OpenAI’s Declarations confirm that its process for each of these topics—conducting custodial interviews, collecting and reviewing documents, and applying redactions—were fundamentally flawed for the reasons described in detail below. To remedy these deficiencies, Plaintiffs request this Court order OpenAI to: (1) reconduct its custodial interview process to adequately identify custodians that might have used text and/or social media platforms to engage

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¹ As explained at the August 12 hearing, by “text,” Plaintiffs are broadly referring to any app based messaging platform. See August 12 Hearing Tr. at 101:20-21.



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in responsive communications and determine which specific platforms each custodian used², (2) conduct a proper collection and review process for the custodians determined to have used text and/or social media platforms for responsive communications, (3) review each custodian's text and social media messages prior to any privacy review by personal counsel, (4) limit its "personal" redactions to a discrete set of topics to be agreed upon by the parties, and (5) promptly produce such responsive communications in advance of the September 12, 2025 deadline for substantial completion of document productions. For Mr. Altman and Mr. Brockman, Plaintiffs additionally request that this Court order OpenAI to complete the foregoing items and promptly produce responsive communications by September 10, 2025.

OpenAI's Declarations are additionally deficient to the extent that they do not include information for custodians that were employed by OpenAI as of July 7, 2023³ but have since left the company. In view of this deficiency, Plaintiffs request this Court order OpenAI to provide information on the topics in the August 12 Order for the Excluded Custodians identified in Section I, *infra*.

I. OpenAI's Custodial Interview Process was Inadequate

	What OpenAI Did	What OpenAI Should Have Done
Custodial Interviews	[REDACTED]	Issues: (1) Custodial interviews should not be done by [REDACTED] with no attorney present; (2) Custodial interviews should involve at least one conversation with outside counsel of record; (3) Custodial interviewers should have asked "whether or not they used a variety of text messaging apps or social media[platforms] to communicate about their work or to communicate about this litigation." August 12 Hearing Tr. at 103:11-14.

During the August 12 discovery conference, Plaintiffs asked OpenAI to certify whether it had adequately conducted its custodial interviews, including by having outside counsel of record

² OpenAI should ask whether each custodian used the following platforms: text and iMessage, Discord, Google Messages, Reddit, Signal, Telegram, WhatsApp, Session Dust, Wire, Threema, Briar, Slack, X (formerly known as Twitter), XMPP, Matrix, Wickr, and Viber.

³ July 7, 2023 is the date the complaint was filed in *Silverman v. OpenAI Inc.*, No. 3:23-03416, the first-filed case in the MDL.

ask its custodians “whether or not they used a variety of text messaging apps or social media [platforms] to communicate *about their work* or to communicate *about this litigation*.” August 12 Hearing Tr. at 103:11-14 (emphasis added). The Court then ordered OpenAI to say in its Declarations “whether the[se] particular questions were asked.” *Id.* at 124:15-17. [REDACTED]



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II. OpenAI's Custodial Collection and Review Process was Improper

	What OpenAI Did	What OpenAI Should Have Done
Custodial Document Collection and Review	[REDACTED]	<p>For any custodian who potentially used text and/or social media platforms to communicate about work or these litigations, OpenAI should have collected the custodian's device and run the agreed-upon search terms across their text and/or social media messages.</p> <p>Additionally, OpenAI's counsel of record in these litigations should have performed the above-described custodial collection and review processes in the first instance for all custodians, including but not limited to Mr. Altman and Mr. Brockman, before personal counsel removed any messages they deemed "purely personal" and thus non-responsive.</p>

During the August 12 discovery conference, Plaintiffs articulated a proper procedure for collecting and reviewing custodial documents:

If there's any doubt as to whether a given custodian used their text or social media to communicate about issues responsive to [Plaintiffs'] request, then the devices should be collected, the agreed-upon search terms should be run, and responsive documents should be produced or logged. And again, we had assumed, but perhaps we need to say explicitly, all of that work should be done by counsel of record in this action.

August 12 Hearing Tr. at 105:4-11. OpenAI's custodial collection and review process, as described in the Declarations, is a stark departure from the above-described procedure. [REDACTED]



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[REDACTED]

[REDACTED]

[REDACTED]

⁴ <https://www.cnn.com/2024/05/29/former-openai-board-member-explains-why-ceo-sam-altman-was-fired.html>



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Plaintiffs ask that this Court order OpenAI's outside counsel of record to collect and search the implicated text and/or social media messages for any custodian who might have used their text or social media to communicate about issues responsive to Plaintiffs' discovery requests. *See* August 12 Hearing Tr. at 105:4-11. Because it has been over 9 months since this Court's December 2, 2024 order, Plaintiffs additionally ask that this Court order OpenAI to identify any communications that might have been deleted in the interim.

III. OpenAI's Reliance on Mr. Altman and Mr. Brockman's Personal Counsel to Conduct Responsiveness Review is Improper

	What OpenAI Did	What OpenAI Should Have Done
Mr. Altman's and Mr. Brockman's Custodial Document Review	[REDACTED]	OpenAI's counsel of record in these litigations should have performed the above-described custodial collection and review processes in the first instance for all custodians, including but not limited to Mr. Altman and Mr. Brockman, before personal counsel excluded or redacted any messages they deemed "purely personal" and thus non-responsive.

The review of Mr. Altman and Mr. Brockman's text and social messages was shockingly deficient in two ways.

⁵ Class Plaintiffs deposed Mr. Hoeschele on April 2, 2025, and intend to seek additional time to depose Mr. Hoeschele in view of this inexplicable delay.

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[REDACTED]

[REDACTED]

[REDACTED]

Plaintiffs ask this Court to order OpenAI’s counsel of record to do the following: (1) perform the responsiveness review of Mr. Altman’s and Mr. Brockman’s text and social media messages before personal counsel does a privacy review; (2) produce all responsive information—even if highly personal; (3) meet and confer with Plaintiffs to reach an agreement on what constitutes (and likewise does not constitute) highly personal information; and (4) log any non-responsive and highly personal redactions.

IV. OpenAI’s Declarations Do Not Contain Information for Certain Excluded Custodians

OpenAI’s Declarations do not include any information about the text and/or social media message collection and review process for the following custodians employed by OpenAI as of July 7, 2023 but who have since departed the company: Liam Fedus, Angela Jiang, Ryan Lowe, Mira Murati, Alex Passos, Alec Radford, John Schulman, Lilian Weng, and Barret Zoph (the “Excluded



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Custodians”). Moreover, as outlined in the chart provided below, most of the Excluded Custodians left OpenAI after they were named custodians (*) in these cases and four of the Excluded Custodians—Liam Feedus, Angela Jiang, Alex Radford, and John Schulman—left OpenAI after the December 2, 2024 order from this Court compelling Defendants to produce text and social media messages from their ESI custodians (**). Accordingly, Plaintiffs request that OpenAI provide a sworn declaration with information on the categories listed in the August 12 Order for each of the Excluded Custodians. If OpenAI did not perform a custodial interview or collect potentially responsive text and/or social messages for any of the Excluded Custodians prior to their departure, Plaintiffs request that OpenAI reach out to do so now.

Excluded Custodian	Date added as a Custodian	Date of Departure from OpenAI
Liam Fedus**	December 6, 2024	March 2025
Angela Jiang**	August 19, 2024	December 2024
Ryan Lowe	December 6, 2024	March 2024
Mira Murati*	August 19, 2024	September 2024
Alex Passos**	August 19, 2024	May 2025
Alec Radford**	August 19, 2024	December 2024
John Schulman**	No later than July 31, 2024	February 2025
Lillian Weng*	July 31, 2024	November 2024
Barret Zoph*	No later than July 31, 2024	September 2024

For these reasons Plaintiffs ask this Court to order OpenAI to: (1) reconduct its custodial interview process to adequately identify custodians that might have used text and/or social media platforms to engage in responsive communications, (2) conduct a proper collection and review process for the custodians determined to have used text and/or social media platforms for responsive



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communications and determine which specific platforms each custodian used⁶, (3) review each custodian's text and social media messages prior to any privacy review by personal counsel, (4) limit its "personal" redactions to a discrete set of topics to be agreed upon by the parties, (5) promptly produce such responsive communications by September 10, 2025 for Mr. Brockman and Mr. Altman and in advance of the September 12, 2025, deadline for substantial completion of document productions for all other custodians, and (6) provide information on the topics in the August 12 Order for the Excluded Custodians identified in Section IV, *supra*.

Respectfully,

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⁶ OpenAI should ask whether each custodian used the following platforms: text and iMessage, Discord, Google Messages, Reddit, Signal, Telegram, WhatsApp, Session Dust, Wire, Threema, Briar, Slack, X (formerly known as Twitter), XMPP, Matrix, Wickr, and Viber.



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